S.B. CIVIL MISC. APPEAL NO.1070/2007.
Smt. Rekha Ben & Anr. Vs. Ranjeet Singh & Anr.

Date of Order :: 24th July 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. P.S. Chundawat, for the appellants.

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By way of this appeal, the claimants seek enhancement over the amount of compensation awarded by the Tribunal on account of accidental death of their son Kaushik Patel, about 29 years of age.

The Motor Accidents Claims Tribunal, Dungarpur in its impugned award dated 18.07.2006 made in Claim Case No.136/2005, for the purpose of quantification of compensation for the parents of the victim, has noticed the submissions of the claimants-appellants that the deceased was earning from his books and stationery shop and was contributing Rs.9,000/- per month to the family; has noticed the statements of AW-1 Ishwarbhai, father of the victim, that the deceased was proprietor of the stationery business and now he was continuing with the same business as proprietor; and has also noticed the fact that earlier the claimant Ishwarbhai and the victim Kaushik were carrying on the same business together. The Tribunal has observed that when the deceased and his father were carrying on the same business together, the business income was not earned with the efforts of the deceased alone. The Tribunal has also noticed that the

father of the victim, AW-1 Ishwarbhai, asserted the income of such business establishment at Rs.12,000/- to 14,000/- per month whereas their alleged employee, AW-2 Manohar Lal, stated such income at about Rs.15,000/- to 20,000/- per month; but has found such statements bereft of any basis. The Tribunal has also noticed that the relevant evidence in the form of accounts and returns were not produced in proof of the business income and in the overall circumstances of the case, has put an estimate on the income of the deceased at Rs.4,500/- per month, i.e., Rs.54,000/- per annum. After deducting one-third from such estimated income, the Tribunal has taken loss of contribution for the claimants at Rs.36,000/- per annum; and with reference to the age of the mother-claimant at 52 years and that of father-claimant at 58 years, the Tribunal has observed that a multiplier of 8 could have been applied but with reference to the decision of the Hon'ble Supreme Court in the case of Tamil Nadu State Transport Corporation Vs. S. Rajapriya has observed that in every case, the multiplier as provided by Second Schedule is not required to be applied.

In the overall circumstances of the case, the Tribunal has considered it appropriate to apply a multiplier of 5 to assess pecuniary loss of the claimants at Rs.1,80,000/- (36,000 x 5). The Tribunal has further allowed Rs.10,000/- to each of the claimants towards non-pecuniary loss and further

Rs.1,000/- towards funeral expenses; and in this manner has made the total award in the sum of Rs.2,01,000/- and has allowed interest @ 6% per annum from the date of filing of the claim application.

In this appeal for enhancement on behalf of the claimants, learned counsel for the appellants strenuously contended that the Tribunal has erred in awarding a meagre amount towards compensation after assessing the income of the deceased much on the lower side and then applying a grossly inadequate multiplier of 5 only. Learned counsel submitted that the Tribunal has been in error in not considering substantial business income of the deceased and his future prospects and in not applying higher side multiplier when the age of the mother claimant was only 52 years.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the award impugned in its totality, this Court is clearly of opinion that the amount awarded by the Tribunal under the impugned award cannot be said to be falling short of just compensation admissible in this case; and this appeal for enhancement does not merit admission.

It is true that the choice of multiplier of 5 in the present case appears to be on the lower side; and with reference to the age of the claimants at 52 and 58 years respectively, a multiplier of 8 could have been applied to assess pecuniary

loss of the claimants; but when viewed in the context of other errors committed by the Tribunal, of putting an estimate on the income of the deceased much on the higher side and then, of taking entire of the two-third of the estimated income towards loss of contribution for the parents, the ultimate award as made by the Tribunal cannot be said to be inadequate.

Though the deceased was said to be earning as proprietor of his business establishment and his father is admittedly continuing with the same business, yet the claimants choose not to produce the relevant accounts of such business so as to establish net earnings of the deceased. Moreover, for the admission of the claimants, of the business being continued by the father of the victim, it is obvious that a substantial part of the said business income has retained itself to the claimants. Yet further, the deceased was an unmarried person in about 29 years of age. Looking to the future certainties and uncertainties, chances of his getting married and thereby a larger part of his income getting diverted to his own family could not have been ignored. The submission for allowing enhancement in the estimated income towards future prospects does not fit in the fact situation of this case. The deceased was not in any settled job or employment so as to consider enhancement in income with reasonable certainty. Contrary to the submission on enhancement, as noticed above, visualising future aspects

comprehensively, the estimate as put by the Tribunal on the loss of contribution for the claimants could only be reduced.

Thus, in the present case, the estimate on the annual income of the victim even at Rs.54,000/- appears to be in excess of a reasonable estimate; and the estimate on annual loss of contribution for the claimants at Rs.36,000/- is definitely on the higher side.

In the aforesaid view of the matter, when the mutiplicand is reduced and then multiplier is enhanced, the result remains approximately the same. Thus, the ultimate assessment as made by the Tribunal cannot be said to be falling too short of reasonable assessment of pecuniary loss. The Tribunal has further allowed Rs.21,000/- towards general damages.

In the ultimate analysis, the award of compensation made by the Tribunal in this case cannot be said to be less than that of just compensation and does not call for interference in appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/